

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, claims 7-12 have been cancelled, rendering the rejection of these claims under 35 USC §102(b) as being anticipated by Emoto (CA '566) moot.

The patentability of the presently claimed invention as set forth in claims 1-6, over the disclosures of the references relied upon by the Examiner in rejecting these claims, will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 1-6 under 35 USC §103(a) as being unpatentable over Emoto in view of Morehouse et al. (US '971) is respectfully traversed.

The gel of Emoto contains a soybean protein. However, the gel is an **isoelectric gel** (see, for example, the Abstract) and its structure is completely different from the gel of the present invention which is formed by an **acid-soluble** soybean protein. The isoelectric gel is formed by adjusting the pH so that the electric charge of protein molecules is decreased to make the protein become **insoluble**. Further, Example 2 of Emoto only shows "soybean isolate" as a protein and there is no teaching or suggestion of the use of an acid-soluble soybean protein in the reference.

As seen from Comparative Example 1 of the present specification, since a soybean protein such as soybean isolate is insoluble in an acidic region, a gel formed by such a protein is so weak that its breaking point cannot even be detected. Therefore, it is considered that, in the gel of Emoto, the gel formation is substantially achieved by a gelling agent rather than a soybean protein. On the other hand, in the gel of the present invention, since an acid-soluble protein is used, the protein itself can form a gel network (see pages 11-12 of the present specification).

Thus, the gel of Emoto is completely different from the gel of the present invention.

Morehouse et al. disclose an acid-soluble soybean protein. However, this reference does not teach or suggest the production of acidic gel foods.

Since as discussed above, the gel of Emoto is completely different from the gel of the present invention, even if Morehouse et al. is combined with Emoto, the combination does not teach or suggest the present invention.

The Examiner takes the position that it would have been obvious to one of ordinary skill in the art to have used the acid-soluble soybean protein as taught by Morehouse et al. in the

gelled foods as taught by Emoto in order to result in a gelled food product with improved clarity and texture from the dissolved protein.

However, Emoto expressly states that it is **necessary** that the protein form an isoelectric gel at the pH of the food product, i.e. pH 3.3 to 4 (page 11, lines 3-5). Using the acid-soluble soybean protein of the Morehouse et al. reference in the process of Emoto would specifically contradict this teaching of Emoto, considering the comments as set forth above concerning the distinctions between the isoelectric gel of Emoto and the acid-soluble soybean protein of the present invention. One of ordinary skill in the art would not have recognized that the result of substituting the acid-soluble soybean protein of Morehouse et al. for the protein of Emoto (which forms an isoelectric gel) would be predictable (see MPEP 2143); and in fact, Emoto expressly teaches away from making this substitution in view of the reference teaching concerning the necessity for the protein to form an isoelectric gel.

Furthermore, even if the Examiner has established a presumption of obviousness, such presumption is overcome in view of the unexpected superior results achieved in accordance with the present invention as compared to the Emoto reference. In this regard, as discussed above, Comparative Example 1 of the present specification shows that use of a soybean protein which is insoluble in an acidic region results in a gel which is so weak that its breaking point cannot even be detected. In contrast thereto, using an acid-soluble soybean protein in accordance with the present invention results in excellent gel properties, as apparent from the experimental results set forth in the specification.

For these reasons, Applicants take the position that the presently claimed invention is clearly patentable over the applied references.

The Examiner has provisionally rejected claim 1 for obviousness-type double patenting as being unpatentable over claim 7 of Serial No. 10/585,661. Applicants kindly request that the Examiner hold this rejection in abeyance pending an indication that claim 1 of the present application is otherwise in condition for allowance.

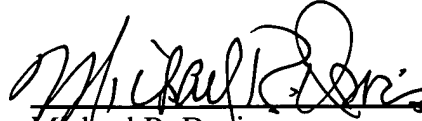
The provisional rejection of claims 7-12 for obviousness-type double patenting as being unpatentable over claims 1-4 of Serial No. 10/579,972 has been rendered moot in view of the cancellation of claims 7-12.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read "Michael R. Davis", written over a horizontal line.

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